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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,459	06/23/2003	David P. Paradis	727002001-3227	2650
7590	11/28/2005		EXAMINER	
Sandra Poteat Thompson Buchalter Nemer, A Professional Law Corporation 18400 Von Karman, Suite 800 Irvine, CA 92612			MATZEK, MATTHEW D	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/602,459	PARADIS ET AL.	
	Examiner	Art Unit	
	Matthew D. Matzek	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 and 57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-26 and 57 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7-23-03

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

Response to Amendment and Arguments

1. The Applicant's arguments, see Remarks, filed 9/9/2005, with respect to the Office Action dated 5/5/2005 have been fully considered and are persuasive. The previously applied prior art rejection of claims 1-26 and 57 have been withdrawn as the applied art did not teach an article with mixed denier and different luster components with binder fibers. The rejection of claims 1-26 and 57 under 35 U.S.C. § 112, 1st paragraph, has been withdrawn as Applicant has provided basis for the "second luster component". Claims 27-56 and 58-59 are canceled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The fiber material of instant claim 1 comprises binder fibers, however claims 7-10 recite that "the fiber material (of claim 1) comprises less than about 2.5 weight percent of the plurality of binder fibers. It is Examiner's interpretation that fiber material comprises less than about 2.5 weight percent binder fibers and should be amended to state this interpretation. An example of an amended claim 7 would be "The fiber material of claim 1, wherein the fiber material comprises less than about 2.5 weight percent binder fibers." The use of the term "of the plurality of binder fibers" makes the language of the claim cumbersome and confusing. The amendment of the claims to recite "binder fibers" in place of "a plurality of binder fibers" is highly recommended by Examiner and is not considered "new matter".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 19-26 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US 2003/0165656) in view of Grindstaff US 5,188,892).

a. Miller et al. teach a carpet fiber and binder material comprising binder fibers of nylon 6, nylon 66, and nylon 12 [0023] and carpet fibers of denier of at least 8 and may be made of polyester [0021]. The carpet fibers may include additives such as pigments, dyes and optical brighteners [0021]. The carpet fibers are staple fibers [0003] and the invention more preferably comprises 1-5 weight percent binder fibers [0035]. Miller et al. is silent as to the use of mixed denier and different luster components.

b. Grindstaff teaches spun textile yarns from polyester staple fibers for fabrics and garments comprising mixed denier. The higher (larger) denier being about twice the lower denier (Abstract). The average denier of the two denier fibers is up to about 3 denier (col. 3, lines 45-51), which allows to 4 denier (larger) and 2 denier (smaller) to be used in the invention. The carpet fibers may include delustrant, such as titanium dioxide, and/or be treated so as to modify the surface or other characteristics of the fibers (col. 16, lines 35-40). The two different denier staple fibers of Grindstaff may be distinguishable and possess varied luster (col. 6, line 65-col. 7, line 5). Therefore, the fibers of Grindstaff

possess two different denier and their luster varies between the two denier (i.e. have different luster components).

c. Since Miller et al. and Grindstaff are from the same field of endeavor (i.e. articles comprising polyester staple fibers), the purpose disclosed by Grindstaff would have been recognized in the pertinent art of Miller et al.

d. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the article of Miller et al. with the mixed denier/different lustrant fibers of Grindstaff. The skilled artisan would have been motivated by the desire to create the carpet of Miller et al. with a pleasant texture (col. 13, lines 9-12, Grindstaff).

e. Claim 19 is rejected as the Miller et al. teach a denier of at least 8 for the polyester staple fibers. Miller et al. prefers a denier of between 12 and 25 [0021]. This coupled with the teaching of Grindstaff of the second fiber having a denier of one half that of the first or larger fiber provides for second fibers of between 6 and 12.5 denier, thereby creating an article that reads on instant claim 20.

f. The combined applied art discloses the claimed invention except for the fiber material having a first denier of less than about 7 or a denier of 6.5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the combined article of Miller et al. and Grindstaff with a first denier of less than about 7 or a denier of 6.5, since it has been held that where general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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4. Claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US 2003/0165656) in view of Grindstaff US 5,188,892) as applied to claim 1 above, and further in view of Kobsa et al. (US 4,559,196).

a. Miller et al. teach a carpet fiber and binder material comprising binder fibers of nylon 6, nylon 66, and nylon 12 [0023] and carpet fibers of denier of at least 8 and may be made of polyester [0021]. The carpet fibers may include additives such as pigments, dyes and optical brighteners [0021]. The carpet fibers are staple fibers [0003] and the invention more preferably comprises 1-5 weight percent binder fibers [0035]. Miller et al. is silent as to the use of mixed denier and different luster components as well as the use of titanium dioxide as a delustrant.

b. Grindstaff teaches spun textile yarns from polyester staple fibers for fabrics and garments comprising mixed denier. The higher (larger) denier being about twice the lower denier (Abstract). The average denier of the two denier fibers is up to about 3 denier (col. 3, lines 45-51), which allows to 4 denier (larger) and 2 denier (smaller) to be used in the invention. The carpet fibers may include delustrant, such as titanium dioxide, and/or be treated so as to modify the surface or other characteristics of the fibers (col. 16, lines 35-40). The two different denier staple fibers of Grindstaff may be distinguishable and possess varied luster (col. 6, line 65-col. 7, line 5). Therefore, the fibers of Grindstaff possess two different denier and their luster varies between the two denier (i.e. have different luster components). Grindstaff is silent as to the amount of titanium dioxide to be used in the polyester staple fibers.

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- c. Since Miller et al. and Grindstaff are from the same field of endeavor (i.e. articles comprising polyester staple fibers), the purpose disclosed by Grindstaff would have been recognized in the pertinent art of Miller et al.
- d. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the article of Miller et al. with the mixed denier/different lustrant fibers of Grindstaff. The skilled artisan would have been motivated by the desire to create the carpet of Miller et al. with a pleasant texture (col. 13, lines 9-12, Grindstaff).
- e. Kobsa et al. disclose a process for improving the dyeability of nylon carpet fiber. The nylon carpet fibers of the applied invention are prepared from random copolymers of nylon 66 and nylon 6 (Abstract). Delustrants for use in the process taught include polyethylene oxide or titanium dioxide (col. 3, line 37-47). Example 1 uses 0.3% TiO₂ for delustrant (col. 4, lines 29-32). Example 5 uses 0.04% TiO₂ for delustrant (col. 8, lines 57-60). The TiO₂ of examples 1 and 5 may be used as either the first or second luster component.
- f. Since Kobsa et al. and Grindstaff are from the same field of endeavor (i.e. staple carpet fibers), the purpose disclosed by Kobsa et al. would have been recognized in the pertinent art of Grindstaff.
- g. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have made the staple fibers of Grindstaff using the titanium dioxide levels of Kobsa et al. The skilled artisan would have been motivated by the desire to create a delustered carpet with texture retention and novel luster and friction properties.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MDM

C. A. MUSKA
CHERYL A. MUSKA
PRIMARY EXAMINER